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EXAMINER

YOUNG, JOHN L

ART UNIT PAPER NUMBER

3622

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/748,496

Applicant(s)

THOMPSON, ALBERT S.

Examiner

John L Young

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ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JOHN LEONARD YOUNG, ESQ.
PRIMARY EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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THIRD ACTION NON-FINAL REJECTION**DRAWINGS**

1. This application has been filed with drawings that are considered informal; however, said drawings are acceptable for examination and publication purposes. The review process for drawings that are included with applications on filing has been modified in view of the new requirement to publish applications at eighteen months after the filing date of applications, or any priority date claimed under 35 U.S.C. §§119, 120, 121, or 365.

CLAIM REJECTIONS (Mixed Class Claim) — 35 U.S.C. §101

2. **Rejections Maintained.**

CLAIM REJECTIONS — 35 U.S.C. §112 ¶1

3. **Rejections Maintained.**

NEW CLAIM REJECTIONS — 35 U.S.C. §112 ¶1**Essential Subject Matter Missing from Claims and/or Specification****(Enablement Lacking)**

4. Claims 10-17 are rejected under 35 U.S.C. §112 ¶1, as based on a disclosure which is not enabling. For example, claim 10 recites a “method for reducing emissions from automotive vehicles; the method including the steps of . . . providing an automotive vehicle having a fuel tank and a fuel tank fill tube in fluid communication with the fuel tank. . . .”

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Applicant's Amendment/remarks (paper#4 filed 6/4/2003, p. 4, ll. 11-16) admits that "it would be more reasonable to interpret the word 'providing' in the transitive sense, i.e., to supply or make available (something wanted or needed). There should be no doubt in a reader's mind that this definition conforms to what the Applicant intended since the Applicant clearly identified in the preamble that claim 10 is a METHOD claim. . . ." This statement in Applicant's argument demonstrates that the particular feature of "providing an automotive vehicle. . . ." is considered essential by the Applicant.

However, the Examiner cannot find in the specification/disclosure and drawings where the method of "providing an automotive vehicle. . . ." is either described or defined.

Please show where in the specification or drawings such a method of "providing an automotive vehicle. . . ." is either described or defined.

The description or definition of "providing an automotive vehicle. . . ." according to the Applicant's remarks is critical or essential to the practice of the claimed invention, but is neither included in the claims nor enabled by the disclosure.

Dependent claims 11-17 are rejected for the same reasons as independent claim 10, because said claims depend from claim 10 or subsequent base claims depending from claim 10.

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CLAIM REJECTIONS (Mixed Class Claim) — 35 U.S.C. §112 ¶2

5. **Rejections Maintained.**

Information Disclosure Statement References Not Considered

6. **Objection Maintained.**

CLAIM REJECTIONS — 35 U.S.C. §103(a)

7. **Rejections Maintained.**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

8. Claims 10-12 & 13-17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Galbo 5,062,541 (11/05/1991) (herein referred to as "Galbo") in view of Harris 6,230,549 (05/15/2001 [US f/d: 4/25/2000] (herein referred to as "Harris").

As per claim 10, Galbo (FIG. 1; FIG. 2; FIG. 4) shows: "providing an automotive vehicle having a fuel tank and a fuel tank fill tube in fluid communication with the fuel tank. . . ."

Galbo (FIG. 4; and col. 2, ll. 1-7) discloses a gas filler cap with a message on the cap designed to remind the consumer *"a mechanism with the cap to deliver a reminder*

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message to a person removing the cap from the filler tube. . . ." (see Galbo (col. 2, ll. 1-7)). The Examiner interprets the disclosure of Galbo (FIG. 1; FIG. 2; FIG. 4) as "providing the message-bearing element on the replacement gas cap. . . ."

Galbo lacks an explicit recitation of "providing a message-bearing element bearing a message worded to remind an automotive vehicle operator to accomplish a task related to vehicle emission reduction. . . ." even though Galbo reasonably suggests same.

Galbo (FIG. 1; FIG. 2; FIG. 4) reasonably suggests: "A method for reducing emissions from automotive vehicles. . . ." and "providing a replacement gas cap configured to close the fuel tank fill tube, the replacement gas cap including a good quality sealing surface capable of sealing the fuel tank fill tube against fuel vapor leakage. . . ." (NOTE: It is well settled in the law that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. (See *Merck & Co. Inc. V. Biocraft Laboratories Inc.*, 10 USPQ2d 1843 (CAFC 1989)).

Galbo lacks an explicit recitation of "A method for reducing emissions from automotive vehicles. . . ." and "providing a replacement gas cap configured to close the fuel tank fill tube, the replacement gas cap including a good quality sealing surface capable of sealing the fuel tank fill tube against fuel vapor leakage. . . ." even though Galbo suggests same.

Galbo lacks an explicit recitation of "removing any existing gas cap from the fuel

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tank fill tube; and installing the replacement gas cap in a sealing relationship on the fuel tank fill tube."

Harris (FIG. 14) discloses filler caps with emission test messages on the filler caps: "FAIL" and "PASS."

Harris (FIG. 14; col. 1, ll. 16-20; col. 1, ll. 34-67; the ABSTRACT; and whole document) discloses: "providing a replacement gas cap configured to close the fuel tank fill tube, the replacement gas cap including a good quality sealing surface capable of sealing the fuel tank fill tube against fuel vapor leakage. . . ." and "removing any existing gas cap from the fuel tank fill tube; and installing the replacement gas cap in a sealing relationship on the fuel tank fill tube."

Harris (col. 1, ll. 34-67; the ABSTRACT; FIG. 14; and whole document) reasonably suggests "A method for reducing emissions from automotive vehicles. . . ." and "providing a replacement gas cap configured to close the fuel tank fill tube, the replacement gas cap including a good quality sealing surface capable of sealing the fuel tank fill tube against fuel vapor leakage. . . ."

Harris proposes gas cap replacement and emission protection and message modifications that would have applied to the system of Galbo. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the disclosure of Harris with the teachings of Galbo because such combination would have provided "a mechanism with the cap to deliver a reminder message to a person removing the cap from the filler tube. . . ." (see Galbo (col. 2, ll. 1-7)) and because such

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combination would have provided means *"to seal properly the fuel tank filler necks of vehicles so that, for environmental reasons, fuel vapors are prevented from leaking into the atmosphere. . . ."* (see Harris (col. 1, ll. 16-20)).

As per claim 11, Galbo in view of Harris shows the method of claim 10. (See the rejection of claim 10 supra).

Galbo (FIG. 4; and col. 2, ll. 1-7) discloses "providing a message-bearing element includes the step of providing a message recommending accomplishment of . . . purchasing a product. . . ." (i.e., purchasing diesel fuel).

Galbo lacks an explicit recitation of "providing a message-bearing element includes the step of providing a message recommending accomplishment of one or more tasks selected from off[sic] a group of tasks including: replacing the gas cap, accomplishing vehicle maintenance, purchasing a product, purchasing a service, inspecting the vehicle for safety problems, and testing vehicle emission levels."

It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Galbo (FIG. 4; and col. 2, ll. 1-7) in view of the disclosure of Harris (FIG. 14; col. 1, ll. 16-20; col. 1, ll. 34-67; the ABSTRACT; and whole document) would have been selected in accordance with "providing a message-bearing element includes the step of providing a message recommending accomplishment of one or more tasks selected from off[sic] a group of tasks including: replacing the gas cap, accomplishing vehicle maintenance, purchasing a product, purchasing a service, inspecting

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the vehicle for safety problems, and testing vehicle emission levels. . . ." because such selection would have provided *"a mechanism with the cap to deliver a reminder message to a person removing the cap from the filler tube. . . ."* (see Galbo (col. 2, ll. 1-7)) and because such selection would have provided means *"to seal properly the fuel tank filler necks of vehicles so that, for environmental reasons, fuel vapors are prevented from leaking into the atmosphere. . . ."* (see Harris (col. 1, ll. 16-20)).

As per claim 12, Galbo in view of Harris shows the method of claim 10.

Galbo (FIG. 4; FIG. 6; FIG. 1; the ABSTRACT; col. 1, ll. 5-7; col. 1, ll. 37-43; col. 2, ll. 1-51; and col. 3, ll. 30-67) shows elements and limitations that suggest: "providing a message-bearing element includes the step of providing a gas cap cover device on the replacement gas cap, the cover device bearing the message and including a shell configured to be disposed over a portion of a gas cap and a connector supported on the shell and configured to engage the gas cap and cause the gas cap to rotate when the cover device is rotated."

Galbo lacks an explicit recitation of "providing a gas cap cover device on the replacement gas cap. . . ." It would have been obvious to a person of ordinary skill in the art at the time of the invention that the disclosure of Galbo (FIG. 4; FIG. 6; FIG. 1; the ABSTRACT; col. 1, ll. 5-7; col. 1, ll. 37-43; col. 2, ll. 1-51; and col. 3, ll. 30-67) would have been selected in accordance with "providing a gas cap cover device on the replacement gas cap. . . ." because selection of such features would have provided "a

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mechanism with the cap to deliver a reminder message to a person removing the cap from the filler tube. . . ." (see Galbo (col. 2, ll. 1-7)) and because such selection would have provided means *"to seal properly the fuel tank filler necks of vehicles so that, for environmental reasons, fuel vapors are prevented from leaking into the atmosphere. . . ."* (see Harris (col. 1, ll. 16-20)).

As per claims 13-17, Galbo in view of Harris shows the method of claim 10 and the methods of subsequent base claims depending from claim 10.

Galbo lacks an explicit recitation of the elements and limitations of claims 13-17 even though Galbo in view of Harris reasonably suggests all of the elements and limitations of claims 13-17.

"Official Notice" is taken that both the concepts and the advantages of the elements and limitations of claims 13-17 were well known and expected in the art by one of ordinary skill at the time of the invention. It would have been obvious to include all of the elements and limitations of claims 13-17 because such inclusion would have provided *"a mechanism with the cap to deliver a reminder message to a person removing the cap from the filler tube. . . ."* (see Galbo (col. 2, ll. 1-7)) and because such inclusion would have provided means *"to seal properly the fuel tank filler necks of vehicles so that, for environmental reasons, fuel vapors are prevented from leaking into the atmosphere. . . ."* (see Harris (col. 1, ll. 16-20)).

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RESPONSE TO ARGUMENTS

9. Applicant's arguments/request for reconsideration (paper#6, filed 03/19/2004) have been fully considered but they are not persuasive for the following reasons:

In response to Applicant's arguments/request for reconsideration (paper#6, p. 2) which states that "the Office Action includes no responses to applicant's arguments opposing . . . the rejections based on 35 USC 101, 35 USC §112 ¶1 and 35 USC §112 ¶2. . . ." in Applicant's prior response, the Examiner provides the following:

As per Applicant's arguments (Amendment B, paper#4, p. 4, ll. 11-16) concerning the 35 USC 101 rejection which opines that "The Applicant maintains that it would be more reasonable to interpret the word 'providing' in the transitive sense, i.e., to supply or make available (something wanted or needed). There should be no doubt in a reader's mind that this definition conforms to what the Applicant intended since the Applicant clearly identified in the preamble that claim 10 is a METHOD claim, and that each of the following paragraphs described steps of the claimed method. . . ." Applicant's argument provides no precedent in support of such an argument and therefore amounts to a general allegation that claim 10 is in proper form pursuant to 35 USC §101 and therefore patentable. Because Applicant's remarks provide only opinion and no precedents in support of such an opinion, the 35 USC §101 of claim 10 is maintained.

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As per Applicant's arguments (Amendment B, paper#4, p. 4, ll. 19-23 and p. 5, ll. 1-21) concerning the 35 USC §112 ¶1 rejections of claims 10-17 which opines that "the Applicant maintains that the Applicant's use of the claimed term 'configured' in this claim doesn't constitute a recitation of intended use. . . . Applicant uses the word 'configured' to describe configurations or structures of physical elements according to their functions. . . . Prevailing case law holds that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of that claimed." Applicant's arguments further opine that "Any finding that would preclude functional limitations if[sic] this type would also be in conflict with 35 USC §112, paragraph 6."

First, Applicant's argument fails to cite any precedent in support of Applicant's argument, even though Applicant's argument opines that "Prevailing case law holds etc."; therefore, Applicant's argument amounts to a general allegation that the claims at issue describe patentable subject matter.

Second, Applicant's argument fails to show how the term "configured" is not overly broad and indefinite; for example, the phrase "gas cap configured to close" does not claim that the fill tube will ever be closed and does not claim how the fill tube will be closed.

And third, there is no 35 USC §112, paragraph 6 means-plus-function language in the claim to be relied upon to derive meaning from the specification for functional/structural description of the "configured to" language of the claim. In an

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attempt to use a “configured to” clause to recite a claim element as a means for performing a specified function, no such function is claimed with specificity; it is impossible to determine the equivalents of the “configured to” language, because if the claim at issue attempts to recite a method step then essential steps are omitted amounting to a gap between the steps; if the claim at issue attempts to recite an essential structural cooperative relationship then said essential structural cooperative relationship is missing, amounting to a gap between necessary structural connections. For the above reasons, Applicant’s argument amounts to a general allegation that the claims at issue are in proper form and patentable pursuant to 35 USC §112 ¶1; therefore, the 35 USC §112 ¶1 rejections are maintained.

As per Applicant’s arguments (Amendment B, paper#4, p. 5, ll. 22-28, and p. 6, ll. 1-5) concerning the 35 USC §112 ¶2 rejections of claims 10-17 which opines that the prior “Office Action includes no support for this contention. . . . [that] Claim 10 is ambiguous because it’s directed to neither a process nor a machine. . . .”; First, the Examiner points to Applicant’s argument (Amendment B, paper#4, p. 5, ll. 1-8) which admits that “Applicant uses the word ‘configured’ . . . [in method claim 10] to describe configurations or structures of physical elements according to their functions. . . .”; Second, the Examiner points to Applicant’s argument (Amendment B, paper#4, p. 4, ll. 11-16) which opines that the term “providing” should reasonably be interpreted in the transitive sense. . . .” to transform the structural limitation of providing (i.e., having) a car

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into a method step of providing (i.e., supplying a car); the specification does not support the interpretation of “providing” in the transitive sense of supplying; therefore, as written and lacking any enablement for the term “supplying” in the disclosure, the “providing an automotive vehicle. . . .” element can only be interpreted as the structural element of having “an automotive vehicle.” For these reasons, the mixed-class claim rejections are maintained.

Applicant's argument/request for reconsideration (paper#6, p. 2, ll. 8-26, p. 3, ll. 1-28, and p. 4, ll. 1-9) which states that “neither Balbor nor Harris disclose . . . [the method steps] of claim 12. Implicit disclosure is not the test for obviousness.

It is well settled in the law that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. (See *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843 (CAFC 1989)).

“The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.’ *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).” (See MPEP 2134.01). Furthermore, it must be recognized that any

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judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, the prior Office Action relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the references relied upon in conjunction with the knowledge of one of ordinary skill in the art either teaches and/or suggests all of the elements and limitations of the instant invention.

In response to Applicant's argument/request for reconsideration (paper#6, p. 6, ll. 3-9) which "requests that the examiner identify each fact that the examiner is officially taking notice of. . . .", it is too late. The MPEP requires that a proper challenge of Official Notice evidence must be presented by Applicant in the next response after the Office action containing the Official Notice evidence. Applicant's prior response (paper#4, filed 10/03/2003) failed to seasonably challenge the Official Notice evidence of the prior Office action (paper#3 filed 6/4/2003). Therefore, said Official Notice evidence is deemed admitted and no further references need be presented by the Examiner. (See MPEP 2144.03).

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Applicant's argument/request for reconsideration (paper#6, p. 4, ll. 10-28, p. 5, ll. 1-28, and p. 6, ll. 1-2) which states that the obviousness rejections of claims 10, 11, and 13-17 are based on impermissible hindsight and lack motivation to combine references. This is not the case. This Office action rebuts Applicant's arguments by repeating the obviousness rejections from the prior Office action:

It is well settled in the law that a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. (See *Merck & Co. Inc. v. Biocraft Laboratories Inc.*, 10 USPQ2d 1843 (CAFC 1989)). Furthermore, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the prior Office Action relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the references relied upon in conjunction with the knowledge of one of ordinary skill in the art either teaches and/or suggests all of the elements and limitations of the instant invention. "The test for an implicit showing is what the combined teachings,

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knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.' *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)." (See MPEP 2134.01).

In response to Applicant's arguments (Amendment B, paper#4, pp. 6-7) which suggests that there is no suggestion that would have motivated one of ordinary skill in the art to combine and/or modify the referenced teachings, it is well settled that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." (See MPEP 707.02(j)).

Also, it is well settled that in order to establish motivation to modify or combine references, "it is not necessary that a reference actually suggest changes or possible improvements which Applicant made." (See *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). In other words the rationale for motivation to modify or combine references does not have to suggest the same motivation of the Applicant.

Also, it is well settled in the law that "There are three possible sources for motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.' *In re Ruffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998). . . ."

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(See MPEP 2143.01). Furthermore, the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the modified teachings of the applied reference in conjunction with the knowledge of one of ordinary skill in the art either teach or suggest all of the elements and limitations of the instant invention. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art.' *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir 2000). See also *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992)." (See MPEP 2134.01). In the prior Office Action obviousness rejections, the Examiner meets the requirements of the motivation test for combining the prior art references by quoting from the references cogent reasons (i.e., motivation) to combine and/or modify the teachings. Furthermore, the Examiner relies on knowledge generally available to one of ordinary skill in the art and asserts that the teachings of the references combined with the knowledge of one of ordinary skill in the art either teaches or suggests all of the elements and limitations of the instant invention. Therefore, based upon the above considerations, *prima facie* obviousness is established in the prior Office action based upon a proper showing of motivation to combine the prior art references to come up with Applicant's invention.

As per claims 13-17, Applicant's arguments (Amendment B, filed 10/03/2003,

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paper #4, pp. 8-9) fail to present an appropriate challenge to the taking of Official/Judicial Notice because Applicant's arguments do not contain a per se demand for references in support of the officially noticed evidence. (MPEP 2144.03).

Therefore, the "Official Notice" or common knowledge or well-known in the art statement is taken to be admitted prior art because Applicant's traversal is inadequate, and no further references in support of the official notice evidence are required.

CONCLUSION

10. Any response to this action should be mailed to:

Commissioner for Patents

P. O. Box 1450

Alexandria, VA 22313-1450

Any response to this action may be sent via facsimile to either:

- (703) 746-7239 or (703) 872-9314 (for formal communications EXPEDITED PROCEDURE) or
(703) 746-7239 (for formal communications marked AFTER-FINAL) or
(703) 746-7240 (for informal communications marked PROPOSED or DRAFT).

Serial Number: 09/748,496

(Thompson III)

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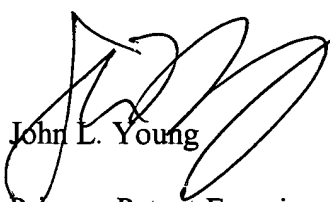
Hand delivered responses may be brought to:

Seventh floor Receptionist
Crystal Park V
2451 Crystal Drive
Arlington, Virginia.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L. Young who may be reached via telephone at (703) 305-3801. The examiner can normally be reached Monday through Friday between 8:30 A.M. and 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, may be reached at (703) 305-8469.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.


John L. Young
Primary Patent Examiner

**JOHN LEONARD YOUNG, ESQ.
PRIMARY EXAMINER**

June 7, 2004